

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-3-06.5

**Rule Type:** Amendment

**Rule Title/Tagline:** Older Americans Act: personal care.

**Agency Name:** Department of Aging

**Division:**

**Address:** 246 N. High St. 1st floor Columbus OH 43215-2046

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#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 10/5/2021
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 121.07, 121.36, 173.01, 173.02, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11
5. **What statute(s) does the rule implement or amplify?** 121.36, 173.39, 173.392; 42 U.S.C. 3025, 3030d; 45 C.F.R. 1321.11, 1321.65
6. **What are the reasons for proposing the rule?**

Section 173.392 of the Revised Code requires ODA to adopt rules to establish requirements to include in, or exclude from, AAA-provider agreements (i.e., contracts) that are paid, in whole or in part, with Older Americans Act funds. The rules in Chapter 173-3 of the Administrative Code establish these requirements.

ODA proposes to amend this rule.

**7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Rule 173-3-06.5 of the Administrative Code establishes requirements applying only to AAA-provider agreements for personal care.

On June 11, 2020, Governor DeWine issued executive order 2020 23D which authorized ODA to adopt emergency amendments to these rules. The emergency amendments gave providers flexibility to conduct certain responsibilities by telephone, video conference, or in person. On December 31, 2020, ODA adopted amendments to this rule that gave providers flexibility to do the same during a state of emergency declared by the governor. On June 18, 2021, Governor DeWine declared an end to the state of emergency, but also issued executive order 2021-09D to authorize ODA to adopt emergency rule 173-1-04 of the Administrative Code, which declares that providers have the same flexibility until the end of the federal public health emergency. Through this rule package, ODA proposes to give providers these flexibilities until the end of federal public health emergency or on an ongoing basis, whether a state or federal emergency exists or does not exist.

Additionally, ODA proposes to amend this rule to achieve the following:

1. Delete an unnecessary use of "available" in paragraph (B)(2)(c) of this rule.
2. Replace "oral or written (including electronic)" with "oral, written, or electronic."
3. Replace "have direct, face-to-face contact with consumers" with "meet consumers in person."
4. Update the URL for the nurse aide registry.
5. Indicate that a person who is listed in the nurse aide registry as "expired" is a person who meets the qualifications to be a PCA.
6. Allow activity plans to be electronic.
7. Allow the providers policies to be electronic.
8. Delete references to 45 C.F.R. 1321.65 since the AAA-provider agreement is required to comply with the entirety of 45 C.F.R. Part 1321.

**8. Does the rule incorporate material by reference? No**

9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.

*Not Applicable*

10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.

ODA made a revised filing of this rule to achieve the following:

1. Insert a new paragraph (B)(3)(c) of this rule to ensure that each PCA successfully completes additional training and competency evaluation if the PCA is expected to perform activities for which the PCA did not receive training or undergo competency evaluation under paragraph (B)(3)(a) of this rule. This will bring the rule into alignment with the equivalent requirement in rule 173-39-02.11 of the Administrative Code.
2. Replace "every twelve months" in paragraph (B)(3)(d) of this rule with "every calendar year."
3. Replace "shall" in the second sentence in paragraph (B)(3)(d) of this rule with "do."
4. Insert a new paragraph (B)(3)(e) of this rule that will clarify what flexibilities are permissible regarding online training.
5. Insert "additional training" between "orientation" and "in-service training" in paragraph (B)(3)(f)(i) of this rule. This will bring the rule into alignment with the equivalent requirement in rule 173-39-02.11 of the Administrative Code.
6. Replace "training dates; training locations; training hours successfully completed; instruction materials used; subjects covered; and to verify the accuracy of the record, the name, qualifications, and signature of each PCA trainer and of each PCA tester" in paragraph (B)(3)(f)(i) of this rule with "name of the school or training organization, name of the course, training dates, and training hours successfully completed," which makes more sense for online training and will align with the requirement in rule 173-39-02.11 of the Administrative Code, which ODA also proposes to implement into rules 173-3-06.4 and 173-39-02.8 of the Administrative Code.

ODA also made a revised filing of this rule to upload a revised public hearing notice.

## II. Fiscal Analysis

**11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$0.00

The adoption of the proposed amendments to this rule will not affect the biennial budget that the Ohio General Assembly established for ODA in H.B. 110 (134th G.A.).

**12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Providers establish the rate they are paid when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit {i.e., per job (e.g., home modification), per item (e.g., a meal), or per a period of time (e.g., personal care)}. The amount an AAA pays a provider is an all-inclusive rate. It's intended to cover all costs incurred in providing the project or service, including administration, training, and reporting. Therefore, the provider's bid includes all costs anticipated in providing the project or service.

If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., 45 C.F.R. 75.329 and rules 173-3-04 and 173-3-05 of the Administrative Code).

Please review the business impact analysis for more information.

**13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

**14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

**15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

**III. Common Sense Initiative (CSI) Questions**

**16. Was this rule filed with the Common Sense Initiative Office? Yes**

**17. Does this rule have an adverse impact on business? Yes**

- A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**

There is no requirement for a provider to enter into an AAA-provider agreement in order to provide services in this state. An AAA-provider agreement is not a gateway to doing business in Ohio. Instead, a provider who wants to add the Older Americans Act programs to its lines of business, it must enter into an AAA-provider agreement in order for those Older Americans Act programs to pay the provider for the services it wants to provide to the consumers of those programs.

- B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

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If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., 45 C.F.R. 75.329 and rules 173-3-04 and 173-3-05 of the Administrative Code).

Please review the business impact analysis for more information.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No**

**IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

- 18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes**

**A. How many new regulatory restrictions do you propose adding? 1**

(B)(3)(c) Additional training: The provider shall ensure each PCA successfully completes additional training and competency evaluation if the PCA is expected to perform activities for which the PCA did not receive training or undergo competency evaluation under paragraph (B)(3)(a) of this rule.

**B. How many existing regulatory restrictions do you propose removing? 1**

(B)(3)(d) Agency- and program-specific orientation SHALL not count toward the eight hours